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McKESSON CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

McKESSON CORPORATION, a Delaware  
corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC.,  
f/k/a Drugmax, Inc., a Connecticut corporation,

Defendant.

FAMILYMEDS GROUP, INC.,  
f/k/a Drugmax, Inc., a Connecticut corporation,

Counterclaimant,

v.

McKESSON CORPORATION, a Delaware  
corporation,

Counterdefendant.

FAMILYMEDS, INC.,  
a Connecticut corporation,

Cross-Complainant,

v.

McKESSON CORPORATION, a Delaware  
corporation,

Cross-Defendant.

Case No.4:07-cv-05715 WDB

**DECLARATION OF ANA SCHRANK  
IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY  
ADJUDICATION BY McKESSON  
CORPORATION**

Complaint Filed: November 9, 2007  
Cross-Complaint Filed: December 17, 2007

Motion Date: August 6, 2008  
Time: 1:30 p.m.  
Place: Ctrm 4  
1301 Clay St., 3d Floor  
Oakland, CA

1 I, ANA SCHRANK, declare that I have personal knowledge of the following facts and, if  
2 called upon to do so, I could competently testify thereto:

3 1. I am employed by McKESSON CORPORATION (“McKesson”). At all times  
4 relevant to the events described below, my title was Vice President, Financial Services. In January  
5 2008, I became the Vice President of Investor Relations for McKesson.

6 **FM Group Debt**

7 2. In the ordinary course of its business, McKesson keeps books and records, almost  
8 exclusively in electronic form, into which persons with personal knowledge of the data being  
9 recorded make entries. Among McKesson’s books and records are those relating to the contractual  
10 relationship between McKesson and Familymeds Group, Inc., f/k/a Drugmax, Inc. (“FM Group”).  
11 Hereinafter, I will refer to these books and records as the “Books and Records re FM Group.”

12 3. The Books and Records re FM Group are in my custody and control as much as they  
13 are in any other person’s custody and control for employees of McKesson that have the required  
14 passwords and clearance. I have reviewed the Books and Records re FM Group and, based on my  
15 review, I know of my own personal knowledge that:

16 a. On February 2, 2007, for fair and valuable consideration, McKesson and FM  
17 Group entered into a written contract entitled “Supply Agreement” (the “Supply Agreement”). The  
18 Supply Agreement is a confidential agreement. However, a true and correct copy of the Supply  
19 Agreement redacted so that only non-confidential provisions material to the Motion remain is  
20 attached to that certain “Compendium of Exhibits” filed and served herewith (the “Exhibit  
21 Compendium”) as **Exhibit A**.

22 b. The Supply Agreement provides a term of three years commencing on  
23 December 28, 2006.

24 c. The Supply Agreement was signed and executed by duly authorized  
25 representatives of both FM Group and McKesson.

26 d. Under the Supply Agreement, McKesson agreed to sell to FM Group, and FM  
27 Group agreed to buy, certain “Merchandise” described therein, including prescription drugs and  
28

1 other health and beauty care products.

2 e. The Supply Agreement is a fully integrated agreement. It provides in Paragraph  
3 17(A):

4 This Agreement embodies the entire agreement between the parties with regard to the  
5 subject matter hereof and supersedes all prior agreements, understandings and  
6 representations with the exception of any promissory note, security agreement or other  
7 credit or financial related document(s) executed by [FM Group] or between [FM  
Group] and McKesson. This Agreement may not be modified, supplemented or  
extended except by a writing signed by both parties.

8 f. The Supply Agreement provides that invoices must be paid within seven days of  
9 the invoice date. Paragraph 4(A) of the Supply Agreement provides:

10 Payment for Merchandise delivered to [FM Group's] retail pharmacies shall be paid by  
11 [FM Group] as follows: Invoices are due and payable within seven days from the  
invoice date via EFT or ACH.

12 The term EFT means "Electronic Funds Transfer." The reference to ACH payments refers to wire  
13 transfers using the "Automated Clearing House" system.

14 g. If payments are made late, FM Group is in default and certain consequences  
15 result, including an increase in the price payable for the products delivered to FM Group, and the  
16 imposition of service charges. Paragraph 4(E) of the Supply Agreement provides:

17 Any payments made after the due date indicated shall result in a two percent (2%) (or  
18 the maximum amount permissible under applicable law, if lower) increase in the  
19 purchase price of the Merchandise. A one percent (1%) service charge (or the  
maximum amount permissible under applicable law, if lower) will be imposed semi-  
monthly on all balances delinquent more than fifteen (15) days.

20 h. The Supply Agreement provides that invoices must be paid by the applicable  
21 due date without set off or excuse. The Supply Agreement provides in Paragraph 4(F):

22 [FM Group] agrees to render payment in full to McKesson on the applicable due date as  
23 specified in this Agreement without (i) making any deductions, short payments, or other  
24 accounts payable adjustments to such obligation; or (ii) seeking to condition such  
25 remittance on any demand for or receipt of proofs of delivery. Any accounts payable  
26 adjustments claimed by [FM Group] shall require prior written authorization of  
McKesson and must be supported by accompanying detail documenting the basis for  
any such requested adjustments.

27 i. Paragraph 12(A) of the Supply Agreement provides, in part, that "Failure by  
28 [FM Group] to make any payment when due in accordance with the terms of its Agreement with

1 McKesson constitutes a default.”

2 j. The Supply Agreement embodies a choice of law provision. Specifically,  
3 Paragraph 12(E) of the Agreement provides that:

4 This Agreement shall be construed in accordance with the laws of the State of  
5 California without regard to the provisions of Section 1654 of the California Civil Code  
6 or the rules regarding conflict of laws.

7 k. The Agreement also contains a section detailing the “Cost of Goods” for  
8 Merchandise that are delivered to FM Group. As relevant here, Paragraph 5(C) of the Agreement  
9 sets forth a pricing provision, which details that in addition to the 2% Price Increase and the 1%  
10 Service Charge, the price that FM Group must pay to McKesson for merchandise increases as the  
11 volume of purchases decreases, and vice versa, across several levels of purchase volumes.

12 1. I have read the entire contract that is the Supply Agreement. The Supply  
13 Agreement contains no provision imposing any obligation up on McKesson to perform an  
14 accounting for FM Group with regard to the amounts ordered by FM Group, paid to McKesson or  
15 owing to McKesson.

16 4. Based on my review of the Books and Records re FM Group, I can testify that the  
17 Merchandise listed in each invoice issued to FM Group or one of its constituent pharmacies was  
18 actually delivered to FM Group or one of its constituent pharmacies. Moreover, at no time during  
19 the period that I sought to collect the sums owing to McKesson from FM Group in my role as Vice  
20 President, Financial Services did any representative of FM Group allege that FM Group had been  
21 billed for Merchandise that was not delivered to FM Group or one of its constituent pharmacies.  
22 The Books and Records re FM Group demonstrate that McKesson performed all of its material  
23 obligations under the Supply Agreement.

24 5. Based on my review of the Books and Records re FM Group, I can testify that  
25 although FM Group generally paid invoices seven days after their invoice date as required by the  
26 Supply Agreement, FM Group did not always do so. When FM Group did not make a payment,  
27 FM Group would miss an entire days’ payment, meaning that all the invoices dated seven days  
28 earlier went unpaid. This began to occur almost immediately after the Supply Agreement was

1 signed.

2 6. After missing payment for a particular day's invoices, FM Group would skip paying  
3 those invoices, choosing to pay subsequent invoices with invoice dates seven days earlier to avoid  
4 charges that accrue when an invoice is paid late. In this way, FM Group could avoid incurring  
5 service charges and could qualify for timely payment discounts on other invoices, though FM  
6 Group had missed the payments due for a particular date's purchase. For example, if FM Group  
7 failed to make a payment for invoices due on March 7, 2007 (meaning the particular invoices were  
8 dated as of March 1, 2007), instead of curing the default that had occurred with regard to the  
9 invoices dated March 1, 2007, FM Group would make the payment due on March 8, 2007 for  
10 invoices dated March 2, 2007 and leave the invoices due on March 7, 2007 unpaid.

11 7. To induce McKesson to continue to ship goods to FM Group under the Supply  
12 Agreement in the wake of several of these missed payment days, FM Group promised McKesson  
13 that it would add some additional money to future daily remittances so that the delinquency  
14 relating to missed days would be paid down while at the same time FM Group could continue to  
15 remain current on other invoices. In practice, this resulted in FM Group adding \$5,000 or \$10,000  
16 "extra" to its daily remittances. These payments, referred to as "adders," did little to address the  
17 shortfall because one day's invoices could aggregate hundreds of thousands of dollars. Indeed, on  
18 April 7, 2007 FM Group failed to make the payment for the invoices dated March 31, 2007 which  
19 resulted in unpaid (or "open") invoices aggregating \$531,138.64 that remain unpaid to this day.

20 8. In addition to making "adder" payments of \$5,000 or \$10,000 to pay down invoices  
21 outstanding on missed due dates, FM Group induced McKesson to continue to ship product by  
22 advising McKesson that FM Group was selling off its stores and that the sales proceeds would be  
23 used to bring FM Group current. In fact, FM Group advised us that it had entered into an  
24 agreement executed in February, 2007 to sell the majority of its stores to Walgreen's and that those  
25 proceeds would be used to pay McKesson in full.

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1           9.       After the sale to Walgreen's apparently closed, there was no substantial pay down of  
2 the amounts owing to McKesson for past-due invoices. Instead, FM Group continued to rely on  
3 adder payments. It then assured us that it planned to sell the stores that had not been sold to  
4 Walgreens in smaller sales that would generate sales proceeds and that those sales proceeds would  
5 be made available to pay McKesson for goods shipped to FM Group and to cure defaults relating to  
6 open invoices. Based on these assurances, McKesson continued to allow FM Group to order  
7 product even as the number of pharmacies operated under the FM Group umbrella began to  
8 dwindle and no substantial payments were made to McKesson using sale proceeds from store sales.

9           10.     On September 17, 2007, I advised FM Group that unless it made a substantial  
10 payment on account of the outstanding amounts owing as of that date, no further shipments would  
11 be made. By this time, FM Group was down to only a handful of stores meaning that the prospect  
12 of new store sales actually paying off the open invoices was looking doubtful.

13           11.     At no time during the entire period that we were trying to collect the outstanding  
14 invoices from FM Group through the time I advised FM group that McKesson could no longer ship  
15 to them did FM Group assert that there were any pricing errors or issues with regard to the amounts  
16 stated as owing on any of their invoices.

17           12.     Once I told FM Group that McKesson was going to stop shipping due to the failure  
18 of FM Group to cure its default, FM Group stopped making any payments to McKesson. Because  
19 of FM Group's payment methodology, this meant that two very old, unpaid invoices went unpaid.  
20 In addition, no payments were made for any of the invoices falling due after September 17, 2007,  
21 although approximately \$10,000 in "adder" payments received before September 17, 2007 were  
22 credited against certain of these invoices as well as \$38,649.88 in returns that were processed on  
23 September 14, 2007.

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13. The invoices affected by FM Group's refusal to make further payments to McKesson is as follows:

| Invoice Date | Due Date | Gross Payment Owed | Amount initially billed because invoices presume FM Group will qualify for "timely payment" discount |
|--------------|----------|--------------------|--|
| 2/26/07      | 3/5/07   | 110,873.35         | 108,655.87   |
| 3/31/07      | 4/7/07   | 531,138.64         | 520,338.35   |
| 9/11/07      | 9/18/07  | 34,745.61          | 34,037.15  |
| 9/12/07      | 9/19/07  | 23,208.17          | 22,740.64  |
| 9/13/07      | 9/20/07  | 21,666.97          | 21,233.63  |
| 9/14/07      | 9/21/07  | 26,575.03          | 26,044.56  |
| 9/17/07      | 9/24/07  | 14,610.90          | 14,423.89  |

The "Gross Payment Owed" column refers to what FM Group owes on account of goods delivered to FM Group after FM Group lost its discount for timely payment.

**D&K Healthcare Resources, Inc.**

14. D&K Healthcare Resources, Inc. ("D&K") is a distributor of pharmaceutical and other products similar to those supplied by McKesson. In August 2005, McKesson acquired all of the stock of D&K. D&K and McKesson are separate corporate entities.

15. At the time McKesson acquired D&K's stock, one of D&K's customers was FM, Inc. FM Inc. and D&K were parties to a "Prime Warehouse Supplier Agreement" dated December 28, 2004 (the "D&K Contract") to which Valley Drug Company South also was a party. The D&K Contract was later amended by a "First Amendment to Prime Warehouse Supplier Agreement" dated December 27, 2005 and executed by Drugmax, Inc. (later known as FM Group), FM Inc. and D&K (the "D&K Amendment"). True and correct copies of the relevant pages (the front and signature pages) of the D&K Contract and D&K Amendment are attached to the Exhibit Compendium as **Exhibit B** and **Exhibit C**, respectively. I am informed that FM Inc. is a subsidiary of FM Group. McKesson was never a party to the D&K Contract, nor did it sign the D&K Amendment which occurred after McKesson acquired the stock of D&K.



1           16.     McKesson did not assume the liabilities of D&K, nor is it the successor in interest to  
2 D&K.

3           17.     I am familiar with the Form 10-Q that McKesson filed with the Securities and  
4 Exchange Commission for the quarter ending September 30, 2005. The first paragraph from the  
5 10-Q cited by FM Group reads:

6                   In August 2005, we acquired substantially all of the issued and outstanding stock of  
7 D&K Healthcare Resources, Inc. ("D&K") of St. Louis, Missouri, for an aggregate cash  
8 purchase price of \$478 million, including the assumption of D&K's debt. D&K is  
9 primarily a wholesale distributor of branded and generic pharmaceuticals and over-the-  
10 counter health and beauty products to independent and regional pharmacies, primarily  
in the Midwest. The results of D&K's operations have been included in the condensed  
consolidated financial statements within our Pharmaceutical Solutions segment since  
the August acquisition date.

11           The foregoing provision confirms that the acquisition of D&K was a stock acquisition, not a  
12 merger. The reference to an "assumption of D&K's debt" does not mean that the operational  
13 liabilities of D&K became the liabilities of McKesson. Instead, it referred to the calculation of the  
14 \$478 million purchase price. In other words, McKesson bought D&K with all of its liabilities for  
15 \$478 million, not for \$478 million less the amount needed to pay off D&K's debt. A true and  
16 correct copy of the cover page and the relevant page from the 10-Q containing the cited language is  
17 attached to the Exhibit Compendium as **Exhibit D**.

18           18.     The second paragraph from the 10-Q cited by FM Group also appears on page 7 of  
19 the 10-Q and it reads:

20                   In connection with the D&K acquisition, we have recorded \$27 million of liabilities  
21 relating to facility exit costs as part of the purchase price allocation. Additional  
22 restructuring costs are anticipated to be incurred as the business integration plans are  
finalized. These restructuring costs are anticipated to be paid by mid-2007.

23           The foregoing excerpt does not mean that D&K's liabilities are now McKesson's liabilities. The  
24 statement merely explains how McKesson was accounting for \$27 million in facility exit costs: as  
25 part of the purchase for D&K. The reference to business integration had to do with having the  
26 computer systems used by D&K and those used by McKesson communicate with one another. It  
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1 did not mean that D&K was subsumed into McKesson. D&K continues to exist as a separate legal  
2 entity and remains liable for its debts, if any.

3 19. As part of my collection efforts, I asked FM Group on several occasions for even  
4 one example of an incorrect price or for even one item of evidence that FM Group had overpaid  
5 McKesson. To date, FM Group has provided no such example or evidence. FM Group also has  
6 not provided McKesson with a specific amount it asserts McKesson owes FM Group, nor with any  
7 list of products for which it alleges it was overcharged.

8 20. By reference to the Books and Records re FM Group, I determined at the time that  
9 we filed the Complaint that as of October 31, 2007, FM Group owed McKesson at least  
10 \$724,574.80. That amount included the 2% Price Increase and the 1% Service Charge authorized  
11 under the Supply Agreement after failure to make payment on time, but it did not include the price  
12 increase that applies because FM Group took advantage of certain discounts attributable to the  
13 volume of product it purchased that it did not qualify for. .

14 21. I have recently checked the Books and Records re FM Group. As of May 30, 2008  
15 FM Group owed McKesson at least \$814,419.44, excluding the price increase that applies due FM  
16 Group's failure to qualify for volume price discounts that it took. Service Charges under the  
17 Supply Agreement continued to accrue at the rates set forth in the Supply Agreement.

18 I declare under penalty of perjury under the laws of the State of California and of the  
19 United States of America that the foregoing is true and correct.

20 Executed this 4<sup>th</sup> day of June, 2008 at San Francisco California.

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23 ANA SCHRANK  
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